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December 11, 2019

By ECF

Honorable Cathy Seibel
United States District Court Judge
Southern District of New York
300 Quarropas Street
White Plains, NY 10601-4077

The Government shall state its position no later than 12/26/19. In the meantime, the Probation Office shall prepare a supplemental PSR.

SO ORDERED.

12/12/19


CATHY SEIBEL, U.S.D.J.

Re: *United States v. Wilbur Randolph, et al.*
14 Cr. 476 (CS)

Dear Judge Seibel:

Your Honor appointed me to assist Mr. Randolph in connection with his “Davis issue.” We request that Your Honor deem this letter to constitute the filing of a Habeas Petition under 28 U.S.C. § 2255 and that the limitations period of 28 U.S.C. § 2255(f) have been satisfied.

On December 23, 2015, Mr. Randolph entered a guilty plea to Counts One and Two of the above-referenced indictment. Count One charged a Conspiracy to Commit Racketeering in violation of 18 U.S.C. § 1962(d). Count Two charged a violation of 18 U.S.C. § 924(c)(1)(A)(iii).

Mr. Randolph was sentenced before Your Honor on May 19, 2016 to seventy (70) months imprisonment on Count 1, and sixty (60) months imprisonment on Count Two, to run consecutively, for a total term of imprisonment of one-hundred thirty (130) months.

We submit that the sentence that this Court imposed on Count Two, cannot stand in light of the Supreme Court’s decision in *United States v. Davis*, 139 S. Ct. 2319 (2019), because a violation of Section 1962(d) qualifies as a “crime of violence” under 18 U.S.C. § 924(c)(3) only under the “residual” or “risk-offense” clause of that statute, which has now been declared unconstitutionally vague.

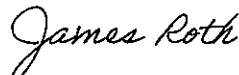
Mr. Randolph does not intend to raise any other claims on collateral review.

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The government has stated that they will consent to vacatur of the 924(c) conviction and resentence of co-defendant Grebinger on his remaining count of conviction: the violation of Section 1962(d). (*See*, Doc. #407). Mr. Randolph stands in the same posture as Grebinger.

We request that Your Honor set a schedule for the government to respond to this application and in anticipation of their consent to vacatur of the 924(c) count, we request that the Court direct the preparation of a supplemental Presentence Investigation Report and that the Court set a date for resentence.

Very truly yours,


James Roth, Esq.

cc: AUSA Scott Hartman (By ECF)
Wilbur Randolph (By Mail)